

Maersk/MSC/ZIM Cooperative Working Agreement

FMC Agreement No. 201263

A Cooperative Working Agreement

Expiration Date:

This Agreement has not been published previously.

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**ARTICLE 1: FULL NAME OF THE AGREEMENT**

The full name of this Agreement is the Maersk/MSC/ZIM Cooperative Working Agreement ("Agreement").

**ARTICLE 2: PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to authorize the parties to engage in cooperative activities in the Trade (as hereinafter defined), as set forth in Article 5 hereof.

**ARTICLE 3: PARTIES TO THE AGREEMENT**

The parties to the Agreement are:

1. Maersk Line A/S ("Maersk")  
Esplanaden 50  
1098 Copenhagen K  
Denmark

and

MSC Mediterranean Shipping Company SA ("MSC")  
12-14 Chemin Rieu  
1208 Geneva  
Switzerland

(acting as a single party)

2. ZIM Integrated Shipping Services Ltd. ("ZIM")  
9 Andrei Sakharov Street  
Haifa, Israel

Maersk, MSC and Zim are sometimes referred to individually as a "Line" or "Lines."

Maersk and MSC are sometimes referred to jointly as the "2M Parties". The 2M Parties and ZIM are sometimes referred to individually as a "Party" and jointly as "Parties."

**ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT**

The geographic scope of the Agreement shall extend to the trades between ports in China, Hong Kong, Taiwan, Korea, Singapore, Malaysia, Thailand, Vietnam, Sri Lanka, Oman, Panama, the Bahamas and Jamaica on the one hand and ports on the U.S. Atlantic Coast (Eastport, Maine to Key West, FL range) on the other hand (the "Trade").

**ARTICLE 5: AGREEMENT AUTHORITY**

5.1 Services.

(a) The Parties are authorized to discuss and agree on the number of vessel strings to be operated in the Trade, the Party that will operate such strings, the size, number and operational characteristics of the vessels to be operated in each vessel string, and the number of vessels to be contributed by each Party or Line. The Parties are authorized to discuss and agree on the ports to be called, port rotation, itineraries, service speed, and all other aspects of the structure and scheduling of the services to be operated hereunder.

(b) Initially, the Parties shall operate five (5) vessel strings hereunder. Four (4) strings shall be operated by the 2M Parties and one (1) vessel string shall be operated by ZIM. The Party or Line(s) operating each string will provide the vessels to that string. Each Line shall retain full responsibility for the operation of its vessels, including the provision of crew, equipment and supplies (and all husbandry tasks), and maintenance.

(c) Initially, each of the five strings shall utilize eleven (11) vessels with nominal capacities of between 6,000 and 12,000 TEUs each and operational capacities of between 5,500 and 11,000 TEUs each. Without further amendment hereto, the Parties

are authorized to operate up to sixty (60) vessels hereunder, each with a nominal capacity of up to 16,000 TEUs.

(d) Changes to the agreed strings and port rotations (the “network design”), whether the initial or future network design (each change a “network redesign”), shall be decided unanimously by the Parties. Either Party may at any time after the 18-month anniversary of the commencement date of the Agreement request the other Party, in writing, to discuss a network redesign (the “requesting Party”). The period of discussion for the network redesign shall be three (3) months from the date of the written request from the requesting Party (the “network redesign discussion period”). The network redesign discussion period may be extended or shortened by agreement. Subject to compliance with any applicable regulatory requirements, an agreed network redesign may be implemented at any time agreed. If a network redesign is not agreed during the network redesign discussion period, the requesting Party shall be entitled to unilaterally change the design of the network that it operates, save that the unilateral change cannot be made earlier than three (3) months after the network redesign discussion period ends unless the other Party (the “affected Party”) agrees. For the avoidance of doubt, if the implementation date of a network redesign cannot be agreed, even though the network redesign is agreed, that shall of itself be a failure to agree on a network redesign permitting a unilateral change.

If a unilateral change will result in a port of call in a string being dropped (a “port change”), the affected Party shall be consulted by the requesting Party about a change in the affected Party’s slot allocation on that string (the “affected string”). The requesting Party shall notify the affected Party of the port change to the affected string within one



month of the end of the network redesign discussion period. The affected Party shall have the option to reduce its slot allocation on the affected string by the average number of moves at the port over the last three months, or by the number of moves allocated to the affected Party on the pro-forma flow sheet for that port, whichever is the lower. If the affected Party does not provide notice to the requesting Party that it is exercising this option within one (1) month of receiving notice of the port change, the requesting Party shall reduce the allocated Party's slot allocation as provided in this paragraph and the number of slots exchanged under Article 5.2 hereof shall be adjusted accordingly.

In the event of a unilateral design change each Party has the option, but not the obligation, to give notice in writing to terminate the Agreement; provided, however, that such termination notice may not be given later than 31st December of a particular calendar year, and to be effective on 1st April of the following calendar year.

For the avoidance of doubt, for purposes of this Article 5.1(d), a network redesign shall mean any change to the existing network such as the addition or deletion of a port, or of the port rotation, on any single vessel string. A structural upgrade to a vessel string that does not change the current network design is not a network redesign and it does not require prior agreement.

(e) If the 2M Parties structurally upgrade any of the strings they operate hereunder during the term of the Agreement, ZIM's slot purchase at 3,250 TEUs and ZIM's slot cost for this slot purchase will remain unchanged.

(f) Each time a vessel string is to be upgraded structurally by one of the Parties, the other Party shall have the option but not the obligation to commit to take more space on the upgraded service string in an amount of TEUs subject to a maximum

number of TEUs proportionate to its capacity in the Trade prior to the commencement of this Agreement.

(g) Notwithstanding the initial 18-month period set forth in Article 5.1(d) above, the 2M Parties may request a network redesign at any time in accordance with the other procedures set forth in Article 5.1(d) in the event of a change, or an anticipated change, in the cooperation under FMC Agreement No. 012463.

5.2 Slot Exchange.

(a) ZIM and the 2M Parties will swap slots between their respective strings at the ratio of 1 TEU for 1 TEU. The number of slots to be swapped between the Parties is 4,550 TEUs per week. Slots exchanged shall be divided among the strings as the Parties may agree from time to time. The 2M Parties shall agree from time to time on the allocation of the slots received by them from ZIM. Without further amendment hereto, upon unanimous agreement of the Parties the number of slots exchanged may be increased or decreased by up to 25%.

5.3 Slot Charter.

(a) The 2M Parties shall charter to ZIM, and ZIM shall purchase from the 2M Parties on a used/unused basis, slots for 3,250 TEUs per week on strings operated by the 2M Parties, with such slots to be divided among such strings as the Parties may agree from time to time. Slots shall be provided to ZIM by the 2M Parties in proportion to the respective slot allocations of Maersk and MSC on the relevant string, or as the 2M Parties may otherwise agree from time to time.

(b) Maersk, MSC and Zim may sell space to or purchase space from one another on the strings operated hereunder on an *ad hoc* basis.

(c) The Parties are authorized to discuss and agree on the compensation and payment terms for slots chartered hereunder.

5.4 Use of Slots.

(a) The slot allocations set forth in both Articles 5.2 and 5.3 are based on an average weight of 9.5 metric tons per TEU, and shall be available in TEUs or by weight, whichever is used first. In the case of an allocation counted by weight, any portion of 9.5 metric tons shall be counted as one (1) TEU.

(b) A Party may not transfer slot allocations between strings.

(c) It is understood and agreed that the 2M Parties may utilize space on the string operated by Zim to fulfill their obligations to provide space to Hyundai Merchant Marine Co., Ltd. ("HMM") under FMC Agreement No. 012463.

(d) The Parties are authorized to discuss and agree on the allocation of reefer plugs each of them shall receive.

(e) It is agreed that no containers of third party carriers will be carried in the vessel strings operated hereunder, except: (i) containers of a carrier that is wholly owned or controlled by a Party may be carried in which case these containers will form part of that Party's capacity allocation; and (ii) containers of HMM carried pursuant to Article 5.4(c) above.

5.5 Terminals.

(a) The Parties are authorized to discuss and agree on the terminals to be used in each port of call. It is understood and agreed that where Maersk or MSC has an equity stake in a container terminal at a port of call, that container terminal must be used by all the five vessel strings operated under the Agreement. In other ports, the terminals



should be the terminals nominated by the 2M Parties, save for Kingston where the ZIM nominated terminal will be called. In all cases, terminal selection shall be subject to Zim or the 2M Parties, as the case may be, receiving fair and competitive terms from the terminal operator. Each Line shall negotiate and contract separately for terminal services.

(b) Each Line shall be responsible for payment of all terminal costs related to the handling and storage of their respective cargo and containers in accordance with their individual contracts with the terminal operators utilized by the Parties.

#### 5.6 General and Miscellaneous Matters.

(a) Each Line shall retain its separate identity and shall have fully separate and independent sales, pricing and marketing functions. This Agreement does not create and shall not be construed as creating any legal entity or joint liability under the law of any jurisdiction.

(b) No information which is commercially sensitive may be exchanged hereunder directly or indirectly between any of the Parties or Lines other than as strictly necessary for the proper functioning of the Agreement and as is permitted by law. Information necessary for the proper functioning of the Agreement consists of information such as vessel particulars, vessel scheduling information, forecasts of container volume, and cargo information necessary to load/unload the vessel. Information which is commercially sensitive consists, for example, of confirmation of actual origin/final destination of cargo, customer names, and pricing information.

(c) The Parties are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation

of this Agreement as may be necessary or convenient from time to time. Such implementing matters include procedures relating to decisions by a Party to add or omit a port of call, to blank a sailing, to drydock a vessel; record-keeping; cargo acceptance, handling and stowage; responsibility for loss or damage; general average; salvage; insurances; the handling and resolution of claims; liabilities among the Parties and with

respect to third parties; indemnities; documentation and bills of lading; the acceptance of dangerous, break bulk and out-of-gauge cargoes, and force majeure. In the event of a conflict between this Agreement and any implementing agreement, this Agreement shall govern.

#### **ARTICLE 6: AGREEMENT ADMINISTRATION**

##### **6.1 Administration.**

This Agreement shall be administered by meetings and communications between representatives of the Parties. The Parties are authorized to enter into such agreements as may be necessary or desirable for the implementation of this Agreement, such as working procedures and a charter party.

##### **6.2 Delegation of Authority.**

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of a Party; and
- (ii) Legal counsel for a Party or for the Agreement.

#### **ARTICLE 7: VOTING**

Except as otherwise provided herein, all decisions hereunder, including amendments to this Agreement, shall require unanimous agreement of the Parties.

#### **ARTICLE 8: DURATION AND TERMINATION OF AGREEMENT**

8.1 This Agreement shall become effective on the date it is effective under the

U.S. Shipping Act of 1984, as amended, or such later date as may be agreed by the Parties in writing (the "Effective Date"), and shall continue in effect indefinitely.

8.2 Notwithstanding Article 8.1, the duration of this Agreement shall be concurrent with the duration of FMC Agreement No. 012293, including if FMC Agreement No. 012293 terminates other than by expiry of its term; provided, however, that this Agreement shall not have the benefit of any extension of Agreement No. 012293 unless the 2M Parties so agree. If the Trade ceases to be part of FMC Agreement No. 012293, the 2M Parties shall notify ZIM as soon as possible and in any event not later than 14 days after the agreement of the 2M Parties to do so, or the notification of such termination has been given.

8.3 Notwithstanding anything to the contrary herein, this Agreement shall be reviewed by the Parties commencing 1st June 2021. Should the Parties not come to an agreement about the terms for a continuation of the Agreement, it shall end if a Party serves notice to the other Party before 1st December 2021, such termination to become effective 1st April 2022.

8.4 If at any time during the term of this Agreement there shall be a Change of Control of a Line (the "Affected Line"), then the Affected Line, or one of the two other Lines may, when becoming aware of such Change of Control, give notice in writing to terminate this Agreement. In the case of termination by the Affected Line, the notice period will be not less than 12 months. In the case of termination by a Line whose control has not changed, the notice period will be not less than 6 months. For purposes of this Article 8.4, "Change of Control" shall include (other than as presently exists): (i) the possession, direct or indirect by any person or entity, of the power to direct or cause



the direction of the management and policies of the parent or the Line, whether by the ownership and rights of voting shares, by contract or otherwise; or (ii) the ownership by the parent falling below 50% of the equity interest or voting power of such Line, save that the transfer of any shares in a line or its direct or indirect parent between close members of the same family or between affiliates shall not constitute a Change of Control.

8.5 If at any time during the term of this Agreement any Line (the "Affected Line"): (i) is dissolved; (ii) becomes insolvent or unable to pay its debts as they fall due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has a winding-up order made against it or enters into liquidation, whether voluntary or compulsorily; (v) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vi) is affected by any event or act similar or under which the applicable laws of the jurisdiction where it is constituted has an analogous effect to any of those specified in sub-clauses (i) or (v) above; or (vii) takes any court action in furtherance of any of the foregoing acts (other than for the purpose of the consolidation, reconstruction or amalgamation or previously approved in writing by the other Lines), then another Line may give written notice to the Affected Line terminating this Agreement with immediate effect.

8.6 Where sums that are owed from one Line to another (other than those that would be considered disputed in good faith) may not be paid or have not been paid in full or that their payment may be delayed, the Line owed the sum due shall serve 30 days' notice to pay in writing on the Line owing the sum. Failing payment within the notice period, the Line owed the sum due shall be entitled, but not obliged, to serve written

notice of immediate termination of the Agreement on the other Line. Any forbearance given in respect of sums owed shall not act as a waiver in respect of future sums owed, irrespective of whether written notice to pay was served.

8.7 In the event documentation contemplated by Article 6.1 hereof is not concluded and ready for signature by December 14, 2018, any Party may serve written notice of termination of this Agreement on the other Party on or before December 31, 2018, terminating this Agreement effective April 1, 2019.

8.8 In the event this Agreement is terminated, any round trip voyage that has commenced shall be concluded.

8.9 Any termination of this Agreement shall be without prejudice to, and shall not affect any rights, remedies, obligations or liabilities of any Party that have accrued prior to the date of such termination.

8.10 The Federal Maritime Commission shall be notified of the termination of this Agreement.

#### **ARTICLE 9: APPLICABLE LAW AND DISPUTE RESOLUTION**

9.1 This Agreement is to be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law; provided, however, that nothing herein shall relieve the Lines of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

9.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (the "Rules"), which are deemed to be incorporated by reference to this Article. Any Party may initiate arbitration proceedings pursuant to this Article 9 by sending its request to the London Court of International Arbitration (a copy of which request shall be sent to the other Parties) (such request being an "Arbitration Request").

9.3 The arbitral tribunal constituted pursuant to the Rules shall consist of three (3) arbitrators appointed pursuant to the agreement of the Parties. If the Parties fail to agree upon the appointment of the three arbitrators within 21 days of the date of the Arbitration Request, the President of the London Court of International Arbitration shall appoint the three arbitrators at the written request of any Party (a copy of which request shall be sent to the other Party).

9.5 The seat of any arbitration pursuant to this Article 9 shall be London and the language to be used in the arbitral proceedings shall be English.

9.6 The rights provided herein are without prejudice to the Parties' rights at law or in equity.

#### **ARTICLE 10: MISCELLANEOUS**

10.1 No Party or Line may assign or transfer its rights or obligations under this Agreement in part or in full to any third party, company, firm or corporation without the prior written consent of the other Party or Lines, which consent may be withheld for any reason.

10.2 If any provision of this Agreement is held to be invalid, illegal or



unenforceable in any jurisdiction in which this Agreement is operational, then said provision(s) shall cease to have effect among the Parties, but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

10.3 No variation or waiver of any of the provisions of this Agreement and no agreement concluded pursuant to any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Parties.

10.4 Communication of all written notices required pursuant to this Agreement shall be sent by e-mail, fax or letter to the following addresses or as otherwise advised:

Line	Address	Fax number	E-mail address
Maersk	50 Esplanaden 1098 Copenhagen K Denmark Attn: Soren Toft	45-3363-4784	soren.toft@maersk.com
MSC	12-14 Chemin Rieu 1208 Geneva Switzerland Attn: Caroline Becquart	41-22-703-8787	caroline.becquart@msc.com
ZIM	9 Andrei Sakharov Street Haifa, Israel Attn: Nissim Yochai	852-2519-8359	Yochai.nissim@zim.com

Any notice given under this Agreement shall be effective upon receipt. A notice of termination must also be sent by registered mail or courier, even if initial notice of termination is provided by other means.

10.5 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not, unless otherwise expressly stated, preclude any



other or further exercise of it or the exercise of any other right, power or remedy.

10.6 This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

**ARTICLE 11: COMPLIANCE**

11.1 Each Line agrees to comply with all applicable laws, rules, regulations, directives and orders issued by any authorities having jurisdiction in relation to the rights and obligations of each Line under this Agreement.

11.2 Any Line that violates applicable U.S., EU or Swiss sanctions laws in connection with its performance under this Agreement shall indemnify and hold the other Line(s) harmless to the full extent of any loss, damage, cost, expense and liability, including reasonable lawyers' fees and court costs and direct loss of profits.

11.3 Each Line warrants that it is not identified on the U.S. Treasury Department's Office of Foreign Asset Control ("OFAC") list of Specially Designated Nationals and Blocked Persons, any other similar list maintained by the Council of the European Union and the State Secretariat for Economic Affairs of Switzerland ("SECO") or otherwise targeted by the U.S., EU or Swiss trade sanctions, whether designated by name or by reason of being included in a class of persons ("Restricted Party"). Goods and/or containers transported under this Agreement will not be transported on a vessel (i) owned and/or operated by any Restricted Party or (ii) otherwise restricted from trading in the U.S., including but not limited to vessels that have called a port in North Korea in the previous 180 days and vessels that engaged in a ship-to-ship transfer with

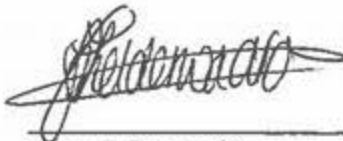
such a vessel in the previous 180 days. The SDN list can be accessed via following link:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

11.4 In line with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act 2010 and other applicable anti-corruption laws, each Line shall implement policies and procedures prohibiting corruption, active and passive bribery, including but not limited to offer, promise, pay or authorize the payment of money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means to any Public official or any other private individual to influence the decision of such person in the performance of his duties. For the purpose of this provision, "Public Official" means: (i) serving with, employed by or acting as an agent of any agency or entity of the national, state or municipal governments of any country; (ii) serving with, employed by or acting as an agent of any public international organization; (iii) working in any government owned or government-controlled commercial enterprise; (iv) family members of any such persons identified above. The Lines shall conduct regular trainings of its employees in relation with anti-corruption and anti-bribery.

Maersk/MSC/ZIM Cooperative Working  
Agreement  
FMC Agreement No.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed  
by their duly authorized representatives as of this 25<sup>TH</sup> day of July, 2018.



Maersk Line A/S

Name: *Ingrid Snelderwaard*  
Title: *Head of Equipment*

MSC Mediterranean Shipping  
Company S.A.

Name:  
Title:

ZIM Integrated Shipping Services Ltd.

Name:  
Title:

Maersk/MSC/ZIM Cooperative  
Working Agreement  
FMC Agreement No.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be  
executed by their duly authorized representatives as of this 25th day of July, 2018.

\_\_\_\_\_  
Maersk Line A/S  
Name:  
Title:

  
\_\_\_\_\_  
MSC Mediterranean Shipping  
Company S.A.  
Name: Gianluigi Aponte  
Title: Group Executive Chairman

\_\_\_\_\_  
ZIM Integrated Shipping Services Ltd.  
Name:  
Title:




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by their duly authorized representatives as of this 25<sup>TH</sup> day of July, 2018.

\_\_\_\_\_  
Maersk Line A/S  
Name:  
Title:

\_\_\_\_\_  
MSC Mediterranean Shipping  
Company S.A.  
Name:  
Title:

  
ZIM Integrated Shipping Services Ltd.

Name: Eli Glikman, President and CEO / Noam Nativ, EVP & General Counsel  
Title: